

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4 CSX TRANSPORTATION, INC.,)
5 Plaintiff,)
6 vs.) Civil Action
7 PORT ERIE PLASTICS, INC.,) Case No.
8 Defendant.) 05-139 Erie

9 - - -

10 Deposition of STEVE BARTOSIK
11 Thursday, February 2, 2006

12 - - -

13 The deposition of STEVE BARTOSIK, called as a
14 witness by the Plaintiff, pursuant to notice and the
15 Federal Rules of Civil Procedure pertaining to the
16 taking of depositions, taken before me, the
17 undersigned, Teresa Constantini Berardi, a Notary
18 Public in and for the Commonwealth of Pennsylvania, at
19 the law offices of MacDonald Illig Jones & Britton,
20 LLP, 100 State Street, Suite 700, Erie, Pennsylvania
21 16507-1498, commencing at 1:35 p.m. the day and date
22 above set forth.

23 - - -

24 COMPUTER-AIDED TRANSCRIPTION BY
25 MORSE, GANTVERG & HODGE, INC.
ERIE, PENNSYLVANIA
814-833-1799

26 - - -

1 If you recall.

2 A Identical to our conversations, and just
3 giving him background on what I had -- my experience
4 with Port Erie Plastics.

5 Q And how long did that conversation last?

6 If you recall.

7 A 45 minutes perhaps.

8 Q What was the business of Presque Isle
9 Trucking?

10 A Presque Isle Trucking was a common and
11 contract carrier licensed by the, at the time,
12 Interstate Commerce Commission.

13 Q Did Presque Isle Trucking have a business
14 relationship with Port Erie Plastics?

15 A Yes, we did.

16 Q Was that under Presque Isle's contract
17 authority or common carrier authority?

18 A Common.

19 Q What is the difference between those two?

20 A Our common carrier authority, we published
21 the tariffs that was basically open to the public to
22 use, as compared to a contract carriage, which is
23 specifically that, you have a written contract and
24 agreement between the two parties involved.

25 Q Did Port Erie ever ask for contract rates

1 versus the published tariff rates?

2 A No.

3 Q What was your title at Presque Isle
4 Trucking?

5 A I was the general manager.

6 Q And how long had you held that position?

7 A From the company's inception till the time
8 I left, almost 14 years.

9 Q The company's inception would be 1991?

10 A Yes.

11 Q What were your job responsibilities as the
12 manager, general manager?

13 A Overall responsibility for entire
14 operation, the hiring employees, obtaining business,
15 the maintenance of operation, the buying of equipment,
16 just about everything there is to do to run the
17 company as well as the receivables and all that
18 stuff.

19 Q And how many employees did you have under
20 you?

21 A At that time -- we downsized the company a
22 couple years ago.

23 At that point was our high point, we had
24 65.

25 When I left, we had six.

1 Q What other types of companies were under
2 the Plastek Group umbrella?

3 A A number of tool and die operations as well
4 as plastic -- a number of plastic molding operations
5 as well.

6 Q Describe for us the services that
7 Presque Isle Trucking provided to Port Erie Plastic.

8 A We provided rail -- rail space for
9 Port Erie Plastics to spot railcars on our lease
10 tracks, and then we would transport the bulk resin
11 from those railcars to their plant in Erie.

12 Q Where was the rail space that you just
13 talked about?

14 A At the Mount Fort Terminal.

15 That's M-o-u-n-t, second word F-o-r-t.

16 Q Two words?

17 A Two words.

18 Q And you referenced a lease track.

19 What is a lease track?

20 A We paid the Mount Fort operation a lease
21 fee on every car that we placed on that track, and we
22 leased rail spaces from them.

23 Q Was it a single track?

24 A No, there were multiple tracks there.

25 Q How many tracks did Presque Isle lease from

1 A That's correct.

2 Q Do you know where the railcar was before it
3 arrived at Mount Fort?

4 A Most of them were on a storage track.

5 Q Where is that storage track?

6 A They had -- CSX had various locations.

7 One of them was right down here on the
8 Bay Front Highway.

9 Some of them were at their yards on
10 Ash Street, and some of them would have been out in --
11 at their marshalling yards out on Downing Avenue.

12 Q And who brought the cars from the CSX
13 storage track to Mount Fort?

14 A A CSX local switch crew would bring them
15 in.

16 Q How often would that occur?

17 A Depending on the particular day, a couple
18 times a week.

19 Q And what triggered the movement of a
20 railcar from the CSX storage yard to the Mount Fort
21 Terminal?

22 A Every time we would make an empty, they
23 would swap one out.

24 Q How would CSX know that you had emptied a
25 car?

1 A We had -- we would fax them with a -- we
2 had a form, an empty fax -- empty car fax that we
3 would send to the railroad with the car numbers and
4 the date that they were emptied.

5 MR. HOWARD: Let's mark this as Bartosik 1.

6 (Thereupon, Bartosik Deposition Exhibit

7 No. 1 was marked for identification.)

8 BY MR. HOWARD:

9 Q The court reporter has handed you an
10 exhibit that we have marked as Bartosik 1. It is a
11 seven-page exhibit.

12 Do you recognize Exhibit 1?

13 A Yes, I do.

14 Q What is the first page?

15 A The first page?

16 Q Well, the real first page, that page
17 (indicating), yes.

18 A That's just a cover letter that I hand
19 wrote explaining roughly what these documents were
20 when I faxed them to you.

21 Q And this is your fax cover sheet to me?

22 A Yes, it is.

23 Q Okay. Let's turn to the third page. Right
24 there (indicating).

25 At the top, there's a fax line that

1 indicates this is page 3 of 3, and it says "CSX
2 Transportation Constructive Placement Notice."

3 What is a constructive placement notice?

4 A This is the railroad's notification to the
5 customer that a car has arrived at destination and is
6 awaiting their instructions as far as what to do with
7 it.

8 Q Is this an example of a constructive
9 placement notice that Presque Isle Trucking would have
10 received from CSX?

11 A Yes, it is.

12 Q Now, this is dated September of 2003.

13 Do you see that in the lower left-hand
14 corner?

15 A Yes, uh-huh.

16 Q And how many cars are identified on this
17 constructive placement notice?

18 A There's one.

19 Q Would a constructive placement notice have
20 been sent by CSX for every car that arrived?

21 A Yes.

22 Q Did Presque Isle Trucking receive
23 constructive placement notices like this for the cars
24 that were shipped to Port Erie?

25 A Yes, we did.

1 not sure. I think they got one, but I can't swear to
2 that.

3 Q Look at the page prior to that one.

4 What is that document?

5 A That is a railcar inventory that I
6 generated every Friday and sent to Jim Witkowski at
7 Port Erie Plastics.

8 Q Did you send it to anyone else?

9 A No.

10 Q The cars that are identified on here --
11 let's look at the first one.

12 AMCX 104557 indicates that the date that
13 car was placed was July 26th.

14 What does that mean, "Date Placed"?

15 A That's the day that that railcar left the
16 storage track and was placed on our private track for
17 unloading.

18 Q How did CSX know to move it from the
19 storage track to your lease track?

20 A Typically, you know, I would -- I would
21 call one of the train masters at the CSX yard here and
22 give them a car number.

23 At times, we would put them on -- we would
24 mark that information on the bottom of our -- we
25 would hand write it on the bottom of our empty car

1 release.

2 We did it a number of different ways.

3 Q How would you know what car number to ask
4 for?

5 A This inventory that we have here is
6 really -- is much later.

7 During the time that this all happened,
8 this inventory would have been much longer, and it
9 would have shown -- in the area where "Date Placed" is
10 marked, it would have shown the information from the
11 constructive placement notice, and it would have said
12 "Constructively Placed" and the date that this
13 constructive placement notice was sent.

14 Q All right. Let me make sure --

15 A And at that point, I would take the oldest
16 car of the -- of -- there are two products involved
17 here, 8949 and 8931, and I would take the oldest car
18 of that product and replace it, you know, replace the
19 empty.

20 Q Now, is it your testimony that this
21 inventory form that we're looking at was different in
22 the 2002-2003 time period?

23 A Yes.

24 Q In what --

25 A I mean, the form, itself, was identical,

1 A No, maybe once but, no. 99 percent of the
2 time, they're all at Mount Fort.

3 Q I believe earlier you testified that on
4 occasion when you would fax that empty car release to
5 CSX, you would also provide them with instructions to
6 bring over a full car?

7 A That's true.

8 In the body of this form, I would just hand
9 write a note to the -- to the local yard here.

10 The local yard also got a copy of this.
11 Faxed it to both places.

12 The customer service number was in
13 Pittsburgh, I believe.

14 And I also would send it to the local guy,
15 kind of expedite the movement of the cars out, is
16 all.

17 And in the bottom of the note here, I would
18 just hand write which car to bring in next.

19 Q And how would you know to give that
20 instruction?

21 A Well, when we emptied one, we had to
22 replace it with a -- typically, a like product from
23 that outside inventory.

24 Q Would it be fair to say whenever you
25 emptied a car at Mount Fort, that was done through the

1 instructions that you were receiving -- your drivers
2 were receiving from Port Erie?

3 A That's correct.

4 Q During the time period where Presque Isle
5 had a business relationship with Port Erie, did you
6 have occasion to have any communications with an
7 entity known as Nexpak?

8 A Not during this time frame.

9 Q How about any time frame?

10 A Later, yes. Not a lot, a couple of times.

11 After -- I can't -- I don't know what dates
12 they were, and not very much.

13 Every once in a while, we'd get a phone
14 call about something, and as time went on and this
15 movement started to go away, we would get a phone call
16 occasionally to divert a car that was up here, but
17 other than that, very seldom.

18 Q Do you recall conversations concerning the
19 diversion of a car during the 2002-2003 time period?

20 A No.

21 The move was in full swing here at that
22 point, and there was -- we never diverted anything at
23 that point.

24 Q During the relevant time point -- by that,
25 I mean the 2002-2003 time period -- did you have

1 So we would never move it unless we would
2 get instructions from somebody to do something, and
3 this is what this -- that's what the term "heel"
4 means.

5 Q And the resin that had originally been in
6 that car had already been loaded onto a Presque Isle
7 truck and sent over to Port Erie; correct?

8 A Well, you know, I'm not certain in this
9 particular case because, again, depending on the time
10 frame, I want to say that we did not haul that
11 material because our equipment could take everything
12 that was in the railcar.

13 When over-the-road outside carriers would
14 come in to pick up this resin, they could not carry
15 as much as we did, so they would leave eight or
16 ten thousand pounds in one of those compartments, and
17 that's what created the heel.

18 Q So when you unloaded a railcar, there was
19 no heel left?

20 A So we got it all. All right?

21 So I want to say that, you know, the reason
22 I gave you guys these documents was so that you could
23 see that we would -- that we would never would do
24 anything without instructions from somebody.

25 We never it took upon ourselves to move any

1 product without authorization from somebody else.

2 Q And the instructions that you got to move
3 resin from Mount Fort to Port Erie came from
4 Port Erie; correct?

5 A Yes.

6 MR. HOWARD: I have no further questions.

7 MR. PARKS: I have some since you brought
8 it up, and thank you for doing that.

9 EXAMINATION

10 BY MR. PARKS:

11 Q Now, you said other trucking companies --

12 A Yes.

13 Q -- would come in to Mount Fort --

14 A Yes.

15 Q -- and hook onto the trains that were in
16 your possession, suck out plastic resin, and then
17 deliver it to somebody else other than Port Erie?

18 A Yes.

19 Q And these are what you would term as
20 Port Erie cars?

21 A Yes.

22 Q They were delivered not for Plastek, but
23 for Port Erie?

24 A That's right.

25 Q And do you know where those shipments of